

EXHIBIT 4-K2

PRECONSTRUCTION CONFERENCE PLANNING GUIDE SUPPLEMENT

LABOR AND CIVIL RIGHTS REQUIREMENTS

The grantee should include the following information concerning federal labor standards and civil rights compliance during preconstruction conferences for construction projects involving HOME funds.

A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

The **Davis-Bacon Act** is applicable to all construction contracts awarded by grantees that provide HOME assistance to 12 or more units.

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality. (Conference participants should be provided with a copy of the current wage determination that has been approved by the Montana Department of Commerce and included in the contract document.)
 - a. Workers are covered by the Davis-Bacon Act while engaged in: working at the site, transporting materials to and from the site and manufacturing or furnishing articles, supplies, or equipment on-site.
 - b. Apprentices or trainees may be paid less than journeyman wages, if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
2. If the contractor needs laborers or mechanics whose classifications do not appear on the wage determination, the local HOME Program Officer or designated Labor Standards Officer must make a request for an appropriate classification to the MDOC HOME Program Office. The HOME staff will then propose a classification and submit it to the U.S. Department of Labor, which will advise the state as to the acceptability of the request within 30 working days. (See **Exhibit 4-I3** for a copy of a *Report of Additional Classification and Rate*, HUD Form 4230A, and instructions.)
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.
4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.

5. Claims and disputes should be reported in writing to the MDOC HOME Program Office. Resolution of all claims and disputes must be reported to the U.S. Department of Housing and Urban Development (HUD), Labor Relations Office. HUD may be called upon by the State to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS

The **Contract Work Hours and Safety Standards Act**, as Amended is applicable to all contracts awarded by local grantees in excess of \$2,000 for construction projects employing mechanics or laborers.

1. Eight hours is the standard workday, forty hours is the standard workweek.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a workweek.
3. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety.

C. DEDUCTIONS

The **Copeland "Anti-Kickback" Act** is applicable to any federally assisted contract subject to Davis-Bacon standards.

1. Full wages earned must be paid.
2. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, and defraying costs of apprenticeship or similar programs.

D. CONTRACTOR AFFIRMATIVE ACTION

1. **Executive Order 11246 as amended by Executive Order 11375** requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment. The prime contractor and all subcontractors must take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, gender, or national origin.

2. **Minority and Women-Owned Business Enterprises: Executive Order 12432** establishes the development of Minority and Women Business Enterprises (MBE/WBE's) as a national priority.
 - a) The grantee should supply a list of area MBE/WBE's that the prime contractor can use for contacting such businesses.
 - b) In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified MBE/WBE's.
3. **Section 3 of the Housing and Urban Development Act of 1968** provides that to the extent feasible, opportunities for training and employment must be given to lower-income residents of HOME-assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by "project area" residents. The grantee should inform the contractor of this requirement. The "project area" is defined as the county or political jurisdiction in which the project takes place. **Exhibit 3-H** provides the Section 3 reporting form.
4. **HUD Administrative Requirements for Grants, 24 CFR Part 85.36**, establishes procurement standards to be followed in federal assistance programs. Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

E. CONTRACTOR REPORTING REQUIREMENTS

In conjunction with the previously mentioned labor and civil rights requirements, **the contractor is required to periodically submit several forms to the grantee's designated Labor Standards Officer.** The prime contractor is fully responsible for providing all reports required from subcontractors.

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the grantee no later than seven days following the end of the pay period. (**Exhibit 4-N1** contains a blank Certified Payroll Form WH-347.)
2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements must be submitted with each Certified Payroll Form. Certified payrolls must be submitted on a weekly basis whether or not work was performed. If no work was performed, the contractor should note this on the payroll. The Statement of Compliance appears on the back of form WH-347, which is found in **Exhibit 4-N1**.

3. The first week after work on the project begins, the grantee's designated Labor Standards Officer should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
4. The prime contractor must supply the grantee's designated Labor Standards Officer with the names of all subcontractors working on the project the first week after work begins, and the names of any new subcontractors immediately after they begin work on the project.
5. In accordance with E.O. 11246, each contractor (prime and sub) engaged in work totaling \$10,000 or more is required to submit a Minority Contract Reporting Form, as well as any documentation regarding affirmative action efforts to the local grantee. (**Exhibit 3-I** contains a sample *Contract Reporting Form*.)
6. Contractual relationships between contractors and alleged subcontractors (who perform mechanic's work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:
 - a) Does the subcontractor have a registered trade name and is there a telephone listing under that name?
 - b) Does the subcontractor have a license?
 - c) Does the subcontractor have liability insurance or a subcontractor's bond?
 - d) Does the subcontractor have a Federal Tax Identification Number?

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number (See Column 1 on Form WH-347, **Exhibit 4-N1**). Non bona-fide self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

F. JOB SITE NOTICES

The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:

1. A copy of the Department of Labor's Notice to Employees Working on Federal or Federally Financed Construction Projects (Form WH-1321) (**Exhibit 4-L1**), which can be downloaded from <http://www.labor.gov/esa/programs/dbra/wh1321.htm>.
2. A copy of the appropriate wage determination, or a Project Wage Rate Sheet (**Exhibit 4-L2**)
2. A copy of the Montana Department of Commerce's Equal Employment Opportunity poster (**Exhibit 5-B**); and
3. A copy of the Department of Labor's Job Safety and Health Protection poster (**Exhibit 4-M**), which can be downloaded from <http://www.osha.gov/Publications/Poster.html>.

G. MONITORING AND SANCTIONS

The grantee's designated Labor Standards Officer is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements.

1. On-site inspections must be conducted by the grantee's Labor Standards Officer to ensure that required notices are posted.
2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the grantee's Labor Standards Officer to ensure compliance with labor standards. The purpose of this examination is to identify any discrepancies and/or violation. Any needed corrections must be made promptly. **Exhibit 4-O** provides keys to identifying payroll report falsification.
3. The grantee's Labor Standards Officer must conduct interviews with construction employees of the prime contractor and subcontractors at least once. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the hours they work, the type of work they perform and the wages they receive.

The interviews should be scheduled early in the first month of construction to assure initial compliance with labor standards. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed. Information gathered during the interviews should be recorded on form HUD-11, a sample of which is in **Exhibit 4-P**. Further instructions for conducting employee interviews are also included in **Exhibit 4-P**.

In accordance with HUD's attempt to streamline Davis-Bacon requirements, if no discrepancies are found between payroll reports and employee interviews, the interviews do not need to be conducted again. The Grantee **must receive HOME approval** to discontinue monthly interviews. However, if the Labor

Standards Officer detects or suspects abuse, monthly interviews must be conducted.

4. Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination, and/or suspension or debarment of the contractor or subcontractor.
5. Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of \$10.00 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.
6. Violations of the Copeland Act could be the basis for contract termination and could result in criminal prosecution by the federal government.